

Internal Revenue Service

Department of the Treasury

District  
Director

Employer Identification Number:

Person to Contact:

Telephone Number:

Refer Reply to:

Internal Revenue Service

CERTIFIED

Date: MAY 7 1993

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986.

The information submitted discloses that you were formed on [REDACTED] as an association in the State of [REDACTED].

For the amendment to your Constitution and Bylaws, your purpose clause reads "[REDACTED] is organized exclusively for charitable, educational, religious, or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code." More specifically as stated in the preamble of your original Bylaws, the purpose of the organization is "to provide non-binding recommendations to [REDACTED] on ways to improve and/or modify the [REDACTED] standard product code as well as future products. Additionally it is the intended purpose of [REDACTED] to establish methods and to provide communication channels to facilitate the exchange of relevant information to the general membership."

According to your Form 1023 application for exemption, the activities of the organization consist of membership meetings to discuss their products, make recommendations for enhancements and new product releases to [REDACTED], and to learn of new developments in the field of electronic funds transfer. You also publish a monthly newsletter which keeps members informed of current scientific and technical data of special interest to them as users of the computer software.

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[REDACTED]

The activities of your organization are managed by an executive committee. The executive committee consists of standing committees with the responsibility of determining long and short-term product requirements used by your members. Each executive committee member has specific duties and responsibilities. See Exhibit 1.

In your [REDACTED] newsletter, you state that [REDACTED] merged with [REDACTED]. [REDACTED] will play a key role in supporting [REDACTED] and other software partners in developing business standards and software platforms for the banking industry.

According to your constitution and bylaws, the members of your organization "shall be those financial institutions or other companies who have a current licensed agreement for use of software products with [REDACTED] and "special members shall include [REDACTED] and any system hardware vendor for which an [REDACTED] software product has been developed."

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes; no part of the net earnings of which inures to any private shareholder or individual.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for any exempt purpose set forth in Section 501(c)(3) of the Code unless it serves a public rather than a private interest.

Revenue Ruling 74-116, 1974-1 C.B. 127, holds that an organization whose membership is limited to organizations that own, rent, or use a specific type of computer and whose activities are designed to keep members informed of current scientific and technical data of special interest to them as users of the computer is not exempt under Section 501(c)(3) of the Code.

We have also considered your application for recognition of exemption from Federal income tax under Section 501(c)(6) of the Internal Revenue Code.

Section 501(c)(6) of the Internal Revenue Code provides for exemption of "business leagues, chambers of commerce, real estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Section 1.501(c)(6)-1 of Income Tax Regulations reads as follows:

"BUSINESS LEAGUES, CHAMBERS OF COMMERCE, REAL ESTATE BOARDS AND BOARDS OF TRADE. A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league. An association engaged in furnishing information to prospective investors, to enable them to make sound investments, is not a business league, since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated. A stock or commodity exchange is not a business league, a chamber of commerce, or a board of trade within the meaning of section 501(c)(6) and is not exempt from tax. Organizations otherwise exempt from tax under this section are taxable upon their unrelated business taxable income. See sections 511 to 515, inclusive and the regulations thereunder.

Revenue Ruling 74-147, 1974-1 C.B. 136, holds that a nonprofit organization, whose members represent diversified businesses that own, rent, or lease digital computers produced by various manufacturers, organized to improve the efficiency of its members' use of computers, qualifies for exemption under Section 501(c)(6) of the Code.

Revenue Ruling 83-164, 1983-2 C.B. 95, holds that an organization whose members represent diversified businesses that own, rent, or lease computers produced by a single computer manufacturer does not qualify for exemption from federal income tax as a business league under Section 501(c)(6) of the Code.

In Guide International Corporation v. United States, No. 90-2441 (7th Cir. Nov. 21, 1991) aff'g No. 89-C2345 (N.D. ILL. 1990), the Appeals Court affirmed the opinion of the District Court which held that an organization whose membership is restricted to organizations who own computer equipment manufactured by one company, fails to qualify for exemption for exemption from federal income tax under Section 501(c)(6) of the Code.

[REDACTED]

Your organization is similar to the organization described in Revenue Ruling 74-116 in that your membership is limited to organizations that use a specific type of software and your activities are designed to keep members informed of current scientific and technical data of special interest to them as users of the software. By making specialized information available to your members, you are serving the private interest of members rather than a public interest.

We have concluded that you are not entitled to recognition of exemption from Federal income tax under Section 501(c)(3) of the Code, since you are not organized and operated exclusively for charitable, religious, or other exempt purposes within the meaning of Section 501(c)(3).

In addition, your organization is unlike the organization described in Revenue Ruling 74-147 in that their membership represented businesses that owned computers produced by various manufacturers and your organization is represented by businesses which own computer software produced by [REDACTED] only. Your organization is similar to the organizations described in Revenue Ruling 83-164 and Guide International Corporation v. United States in that you represent businesses that own computers produced by a single computer company. Because your activities are limited to the [REDACTED] of [REDACTED] computer software, your organization helps to provide a competitive advantage to [REDACTED] and to its customers at the expense of [REDACTED]'s competitors and their customers that may use other brands of computer software.

We have also concluded that you are not entitled to recognition of exemption from Federal income tax under Section 501(c)(6) of the Code. Your activities are aimed towards promoting, developing and improving a particular software. You are not promoting the common business condition of one or more lines of business, but rather promoting the common business interest of individual members that use a particular brand of computer software.

You are required to file Federal Income Tax Returns.

Contributions made to you are not deductible by the donors as charitable contributions as defined in Section 170(c) of the Code.

If you do not agree with these conclusions, you may within 30 days from the date of this letter, file a brief of the facts, law and arguments (in duplicate) which clearly sets forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission. A conference will be arranged in the Regional Office after we have had an opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice Requirements regarding



[REDACTED]

the filing of a power of attorney and evidence of enrollment to practice must be met. We have enclosed Publication 892, Exempt Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.

If you do not protest this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service".

Please keep this determination letter in your permanent records.

If you agree with this determination, please sign and return the enclosed Form 6018.

If we do not hear from you within 30 days from the date of this letter, this determination will become final.

[REDACTED]  
District Director

Enclosures:  
Publication 892  
Form 6018